IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DAWN M. BEILKE,	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	**Case No. 09 CH 15956**
	)	
	)	**Judge Dorothy Kirie Kinnaird**
POLICE BOARD OF THE CITY OF CHICAGO, DEMETRIUS E. CARNEY, SCOTT J. DAVIS, PHYLLIS L APELBAUM, VICTOR M. GONZALEZ, PATRICIA C. BOBB, WILLIAM C. KIRKLING, D.D.S., REV. JOHNNY L. MILLER, ART SMITH, GEORGE M. VELCICH, MAX A. CAPRONI, Executive Director of the Police Board of the City of Chicago, MICHAEL G. BERLAND, Hearing Officer, PHILIP CLINE, former Superintendent of the Chicago Police Department, and JODY WEIS, Superintendent of the Chicago Police Department,	)	
	)	
	)	
Defendants.	)	

ORDER

This case came before the Court for continued hearing on Plaintiff's Petition for Administrative Review. The Court has received and reviewed Plaintiff's Petition, Plaintiff's Memorandum in Support of Petition of Administrative Review, Respondent's Brief in Opposition to Petitioner's Petition for Administrative Review, Plaintiff's Reply Brief in Support of Petition for Administrative Review, the Administrative Record, Respondent's Brief on

Whether an Administrative Agency is Required to Make Specific Findings of Fact in Order to Be Judicially Reviewed, and Petitioner's Response to Brief on Whether an Administrative Agency is Required to Make Specific Findings of Fact in Order to Be Judicially Reviewed. The Court has considered the relevant statutory and case authority, as well as the Rules of Conduct of the Chicago Police and the oral argument of counsel.

THE COURT FINDS AS FOLLOWS:

1. On March 19, 2009, the Defendant Police Board of Chicago issued a unanimous Decision adopting the Findings of Hearing Officer Michael G. Berland and ordering Plaintiff discharged for violating Rules 1, 2 and 6 of the Chicago Police Department's Rules of Conduct.

2. In its Decision, the Police Board stated that it had "read and reviewed the record of proceedings in this case," "viewed the video-recording of the testimony of the witnesses," "received the oral report of the Hearing Officer, Michael G. Berland" and "conferred with the Hearing Officer on the credibility of the witnesses and the evidence."

3. The findings of the Hearing Officer adopted by the Police Board briefly outline the nature of the proceedings and, in Paragraphs 4, 5 and 6, find the Plaintiff guilty of violating Rules 1, 2 and 6, citing the following conduct:

> On or about August 9, 2007, [Plaintiff] appeared at the Chicago Police Department's Random Drug Testing Unit, located at or about 35110 South Michigan Avenue, Chicago, and provided a urine specimen that contained marijuana metabolites, and thus on or before that date she was in possession of marijuana....

4. The Police Board did not make any specific findings regarding the credibility of witnesses, particularly the conflicting testimony of the expert witnesses. The Police Board did not make any specific findings as to Plaintiff's explanation for how the marijuana metabolites came to be found in her system.

5. A decision by an administrative agency must contain findings to allow for judicial review of the agency's decision. *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231, 242 (2009) (citing *Reinhardt v. Board of Education of Alton Community Unit School Dist. No. 11*, 61 Ill. 2d 101 (1975)). The grounds for the agency's action must be clearly and adequately sustained. *Id.* Defendants argue that decisions of the Police Board do not require express findings of fact specifying the basis of the agency's decision. For this proposition, Defendants cite to *Suttle v. Police Board of City of Chicago*, 11 Ill. App. 3d 576 (1st Dist. 1973); *O'Boyle v. Personnel Board of the City of Chicago*, 119 Ill. App. 3d 648 (1st Dist. 1983) and *Massey v. Fire and Police Commission of City of Mt. Vernon*, 26 Ill. App. 2d 147 (4th Dist. 1960). However, each of these cases has been called into question by the Appellate Court in *Schmeier v. Chicago Park District*, 301 Ill. App. 3d 17 (1st Dist. 1998). In *Schmeier*, the Court stated "[t]his line of cases is not compelling support for the unlikely proposition that findings of fact are never required in final administrative orders." 301 Ill. App. 3d 17, 34 (1st Dist. 1998).

6. In *Garrido v. Cook County Sheriff's Merit Bd.*, 349 Ill. App. 3d 68 (1st Dist. 2004), the Illinois Appellate Court reviewed an administrative order dismissing a sheriff's deputy for a positive drug test. Like in this case, the Plaintiff in *Garrido* offered an innocent explanation for how the drugs were found in her system. She put forth substantial evidence that she had purchased herbal tea from Peru which contained cocaine. The tea had been prescribed by a Peruvian doctor who assured the Plaintiff that it had been "de-cocainized." The Sheriff's Merit Board made detailed findings in which it found Plaintiff's witnesses and explanation credible. Despite making these factual findings, the Merit Board upheld Plaintiff's termination from her job. The Appellate Court reversed, finding that reinstatement was appropriate, because the

application of the drug-free workplace policy by the Merit Board was not rationally related to the specified purpose of the policy and, as such, violated the Plaintiff's substantive due process rights. *Id.* at 80. The Court went on to say:

> [I]t would have been pointless for petitioner to have called numerous witnesses and presented extensive evidence over a period of several days, and for the Sheriff to have called a rebuttal witness, if the Merit Board was required under the policy to automatically dismiss [Plaintiff] for cause based solely upon the positive drug screen. In other words, the Merit Board was required to consider the circumstances surrounding the charge.

Id. at 79.

7. As in *Garrido*, this case involves the discharge of a law enforcement officer solely based on a failed drug test. Here, however, the Police Board failed to mention or to make any findings as to Plaintiff's explanation for how the marijuana particulates came to be in her system. The Police Board may have reflected on Plaintiff's innocent explanation but ultimately rejected its credibility based upon expert testimony or other evidence. There is no indication whatsoever that the Police Board considered the circumstances surrounding the charge as required by *Garrido*. The Police Board made no mention of the Plaintiff's testimony or of the expert testimony. It is, thus, impossible to know whether the Police Board's decision was against the manifest weight of the evidence. Without specific findings, the Court cannot conduct a proper judicial review of the Police Board's decision.[1]

8. Therefore, this Court finds, as a matter of law, that the findings of the Police Board are insufficient to permit this Court to conduct a judicial review of the decision to discharge Plaintiff.

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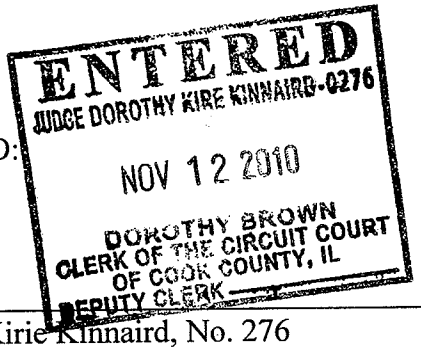
[1] This Court also notes that the Police Board failed to make any specific findings concerning the appropriateness of the penalty of discharge in this case. Plaintiff argues that this penalty was unduly harsh given the mitigating circumstances and that the Police Board failed to provide any finding of fact to state why it decided on the penalty of termination.

IT IS, THEREFORE, HEREBY ORDERED THAT the March 19, 2009 Decision of the Police Board of Chicago is reversed and remanded with the direction that the Board make specific findings as to Plaintiff's explanation for how marijuana metabolites came to be in her system.

ENTERED:



Dated: November 12, 2010

Dorothy Kirie Kinnaird, No. 276